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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,876	06/21/2001	Randy L. Hackbarth	Hackbarth 2-3-12	6076
46304 7590 08/16/2010 RYAN, MASON & LEWIS, LLP 90 FOREST AVENUE LOCUST VALLEY, NY 11560				
EXAMINER				
PITARO, RYAN F				
ART UNIT		PAPER NUMBER		
2174				
MAIL DATE		DELIVERY MODE		
08/16/2010		PAPER		

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* RANDY L. HACKBARTH,  
JAMES DAVID HERBSLEB,  
and GRAHAM JOHN WILLS

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Appeal 2009-000934  
Application 09/886,876  
Technology Center 2100

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Before JAMES D. THOMAS, HOWARD B. BLANKENSHIP, and  
JAY P. LUCAS, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

## STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-27, which are all the claims in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

### *Invention*

Appellants' invention relates to a dynamic visual representation of the members of a team who may be located at geographically distributed locations. The visual representation provides a Web portal that displays static team information, provides a dynamic view of the team members' presence and their current locations, and allows contact to be made by members of the team using the Web interface to initiate e-mail, chat sessions, person-to-person calls, or conference calls. Abstract.

### *Representative Claim*

1. A method for use in providing a Web team portal in a collaborative system comprising the steps of

setting up a plurality of team members to collaboratively communicate;

automatically collecting presence information of each of said members in said team;

automatically determining a current location for each team member; and

dynamically displaying a visual representation having a plurality of display windows including at least said team members, said collected presence and location information, and

a set of mechanisms for a team member to use in conjunction with said displayed presence and location information to initiate a prescribed mode of communicating with one or more others of said members in said team for a particular collaborative purpose;

wherein said visual representation comprises a time axis having axis positions corresponding to respective ones of a plurality of time ranges of differing durations arranged along the time axis in a sequence of increasing duration from a first time range of relatively short duration to additional time ranges of progressively longer duration, a category axis having axis positions corresponding to respective ones of the team members, and a plurality of graphic elements, a given one of the graphic elements specifying an activity state for a particular one of the plurality of team members for a particular time period, the particular one of the plurality of team members being indicated by position of the graphic element relative to the category axis, the particular time period being indicated by position of the graphic element relative to the time axis.

#### *Examiner's Rejections*

Claims 1-27 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Tang (US 2002/0101446 A1) and Seybold (US 5,877,758).

#### *Claim Groupings*

In view of Appellants' arguments in the Appeal Brief, we will decide the appeal on the basis of claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii).

#### ISSUE

Does the recitation "said visual representation comprises a time axis having axis positions corresponding to respective ones of a plurality of time

ranges of differing durations arranged along the time axis in a sequence of increasing duration from a first time range of relatively short duration to additional time ranges of progressively longer duration” in claim 1 represent non-functional descriptive material that is not entitled to patentable weight?

## FINDINGS OF FACT

We rely on the Examiner’s findings set forth in the Final Rejection and the Answer.

## PRINCIPLES OF LAW

### *Claim Interpretation*

The claims measure the invention. *See SRI Int’l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc). During prosecution before the USPTO, claims are to be given their broadest reasonable interpretation. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

Our reviewing court has held that non-functional descriptive material cannot lend patentability to an invention that would have otherwise been anticipated by the prior art. *See In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004). *Cf. In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability). The content of non-functional descriptive material is not entitled to weight in the patentability analysis. *See In re Lowry*, 32 F.3d 1579, 1583 (Fed. Cir. 1994) (“Lowry does not claim merely the information content of a memory. . . . Nor does he seek to patent the content of

information resident in a database.”). *See also Ex parte Nehls*, 88 USPQ2d 1883, 1887-90 (BPAI 2008) (precedential).

## ANALYSIS

Appellants contend that neither Tang nor Seybold teach or suggest “a time axis having axis positions corresponding to respective ones of a plurality of time ranges of differing durations arranged along the time axis in a sequence of increasing duration from a first time range of relatively short duration to additional time ranges of progressively longer duration” as recited in claim 1. App. Br. 8. The Examiner finds that the time axis layout is a matter of design choice. Ans. 7. Appellants respond that “the scope of claim 1 encompasses, for example, time axes having a different number of time ranges than those recited in the cited portion of the specification, as well as time ranges of durations other than the six specific durations enumerated in the cited portion of the specification.” Reply Br. 2.

The pertinent question is whether an otherwise anticipated or obvious method becomes non-obvious because it includes a step of displaying a visual representation of a time axis on a substrate. Where printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability. Thus, the relevant inquiry here is whether the visual representation of claim 1 has a new and unobvious functional relationship with the substrate (e.g., electronic display).

The relationship between the visual representation and the display is not functional. The visual representation of the time axis in no way transforms the process of displaying data on the display device. Irrespective

of whether the substrate displays a time axis, the actual method of displaying data is the same. In other words, the “visual representation comprises a time axis” limitation “in no way depends on the [method], and the [method] does not depend on the [‘visual representation’ limitation].” *In re Ngai*, 367 F.3d at 1339. The “visual representation” is therefore non-functional descriptive material that is not entitled to patentable weight.

Appellants present additional arguments relating to the combination of Tang and Seybold. The Examiner turns to Seybold to show details of the “visual representation” of claim 1. Ans. 4. Appellants contend that Seybold is not analogous prior art. App. Br. 10; Reply Br. 3. Appellants also contend that the Examiner’s reasons for combining Tang with Seybold rely on impermissible hindsight. App. Br 11. However, given that the time axis recitation is not entitled to weight in the patentability analysis, we need not reach the questions of whether Seybold is analogous art and whether the Examiner relies on impermissible hindsight.

### CONCLUSION OF LAW

The recitation “said visual representation comprises a time axis having axis positions corresponding to respective ones of a plurality of time ranges of differing durations arranged along the time axis in a sequence of increasing duration from a first time range of relatively short duration to additional time ranges of progressively longer duration” in claim 1 is directed to non-functional descriptive material that is not entitled to weight in the patentability analysis.

DECISION

The rejection of claims 1-27 under 35 U.S.C. §103(a) as being unpatentable over Tang and Seybold is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED

msc

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